IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1141 OF 2004
IN
SECOND APPEAL NO. 1176 OF 2004

Eknath Baban Kamthe. ... Applicant.
Versus.
Sadruddin Mohamadbhai Somaji & anr. ... Respondents.

Shri Mohan Pungaliya for the Applicant.

Shri A.M.Joshi for the Respondent No.1 & 2.

CORAM : ABHAY S. OKA, J.

DATED : 31st March, 2005.

P.C.:

1. Rule. The Respondents waive service. The Courts below have passed a decree for possession in respect of a structure approximately admeasuring 600 sq.feet in which according to the Applicant he is residing and running a small tea shop. Considering the fact that the Applicant has failed in both the Courts below, while granting stay of execution of the decree, the claim of the Respondents will have to be secured. Therefore, the Appellant is not entitled to unconditional stay. Considering the facts and circumstances of the case, the following order is passed:

(a) Till the final disposal of the Second Appeal, there will be interim relief in terms of prayer clause(a) subject to the following conditions:

. (i) The Appellant will deposit in the trial Court a sum of Rs.500/- per month from 1st March 2004 till disposal of the Second Appeal.

. (ii) The amount for the period between 1st March 2004 to 30th April 2005 shall be deposited by the Appellant in the trial Court on or before 31st July 2005.

. (iii) The Appellant shall deposit a sum of Rs.500/- per month from May 2005 on or before 10th of every calender month in the trial Court.

. (iv) The Appellant will file an undertaking in writing within three weeks from today in this Court stating that he will not part with possession of the suit structure in favour of any third party.

(b) As and when the amounts are deposited by the Appellant, the Respondents will be at liberty to withdraw the said amounts. It is made clear that the deposit of the said amount by the Appellant and the

withdrawal thereof by the Respondents shall be without prejudice to the rights and contentions of the parties and subject to further orders which may be passed in the Second Appeal.

(c) In case the Appellant commits any default in payment of the aforesaid amount, liberty to the Respondents to apply for vacating the interim order.

(d) Civil Application disposed of in the above terms with no order as to costs.

(e) Parties to act on authenticated copy of this order.

Judge.